

Ken Berry 10567 Mariposa Avenue, Jackson, CA 95642 berry-k@sbcglobal.net

October 2, 2008

**Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114**

Re: CEQA Comments

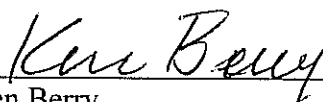
Enclosed please find 5 letters commenting on projects before the Regional Board and 5 letters requesting notice of future actions.

The projects included are:

1. City of Grass Valley Wastewater Treatment Facility (Nevada County)
2. Live Oak Wastewater Treatment Plant (Sutter County)
3. Deuel Vocational Institution Wastewater Treatment Plant (San Joaquin County)
4. Forward Landfill (San Joaquin County)
5. HJ Baker & Port of Stockton (San Joaquin County)

You may call me at 209-223-1769 if you have any questions.

Sincerely,



Ken Berry,
California Citizens For Environmental Justice

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Ken Berry 10567 Mariposa Avenue, Jackson, CA 95642 berry-k@sbcglobal.net

October 2, 2008

**Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114**

**Re: HJ Baker & Port of Stockton Molten Sulfur Processing Plant
Cleanup and Abatement Order No R5-2008-XXXX**

The Central Valley Regional Water Quality Control Board (R5WB) proposes to approve a Cleanup and Abatement Order (CAO) at its regular meeting to be held on October 23/24, 2008, or a future meeting. Approval of the proposed CAO would establish a schedule for the Forward Landfill to develop and implement a plan to characterize and remediate a plume of polluted groundwater.

The proposed action is unlawful because it violates the requirements of the California Environmental Quality Act (CEQA, Public Resources Code (PRC) §21000 and following). In particular, Finding No. 27 of the proposed CAO cites Title 14 of the California Code of Regulations (14 CCR) §15321(a)(2) as the authority for not preparing an environmental analysis. 14 CCR§15321 is a Categorical Exemptions.

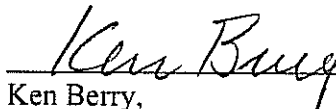
However, 14 CCR §15300.2(e) prohibits any categorical exemption from being utilized to avoid preparing an environmental analysis for any site on any list compiled pursuant to Government Code (GC) §65962.5. GC §65962.5(c)(3) requires the listing of any site for which a CAO is issued pursuant to Water Code (WC) §13301 or §13304 concerning the discharge of hazardous materials. "Hazardous materials" are defined in Health and Safety Code (HSC) §25501(o).

Finding No. 24 of the proposed CAO identifies the authority for taking the action as WC §13304.

This comment is submitted pursuant to CEQA and is submitted on my behalf and behalf of the California Citizens for Environmental Justice. Violation of GC §65962.5 and 14 CCR §15300.2 are is long standing and widespread practice of the State Water Resources Control Boards (SWB) and the Regional Water Quality Control Boards (RWBs), of which R5WB is one.

You may call me at 209-223-1769 if you have any questions.

Sincerely,



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California Citizens For Environmental Justice

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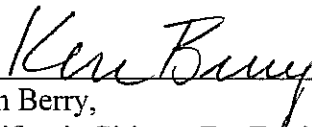
**Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114**

Re: HJ Baker & Port of Stockton Molten Sulfur Processing Plant

Please include me in the mailing list for notices concerning this facility pursuant to Public Resources Code (PRC) §21092.2.

You may call me at 209-223-1769 if you have any questions.

Sincerely,



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California Citizens For Environmental Justice

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October 2, 2008

**Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114**

**Re: City of Grass Valley Wastewater Treatment Facility
Cease and Desist Order No R5-2008-XXXX**

The Central Valley Regional Water Quality Control Board (R5WB) proposes to approve a Cease and Desist Order (CDO) at its regular meeting to be held on December 4/5, 2008. Approval of the proposed CDO would establish a schedule for the City of Grass Valley to develop and implement a plan to cease discharging certain pollutants to Wolf Creek.

The proposed action may be unlawful because it may violate the requirements of the California Environmental Quality Act (CEQA, Public Resources Code (PRC) §21000 and following). In particular, Finding No. 15 of the proposed CDO cites Title 14 of the California Code of Regulations (14 CCR) §15321(a)(2) as the authority for not preparing an environmental analysis. 14 CCR §15321 is a Categorical Exemption.

However, 14 CCR §15300.2(e) prohibits any categorical exemption from being utilized to avoid preparing an environmental analysis for any site on any list compiled pursuant to Government Code (GC) §65962.5. GC §65962.5(c)(3) requires the listing of any site for which a CDO is issued pursuant to Water Code (WC) §13301 or §13304 concerning the discharge of hazardous materials. "Hazardous materials" are defined in Health and Safety Code (HSC) §25501(o).

Finding No. 7 of the proposed CDO identifies the authority for taking the action as WC §13301.

Finding 15 contains a detailed discussion of why the R5WB believes the action is exempt from CEQA. 5 independent reasons are given: 1) the CDO is not a project within the meaning of CEQA, 2) the CDO is indefinite because the Discharger will select a control measure, 3) the CDO is exempt because it is an NPDES permit (Water Code (WC) §13389), 4) the CDO implements an NPDES permit, and 5) the CDO is exempt by 14 CCR §15321. It appears that none of these reasons are valid, as discussed below.

Reason 15.5 is invalid on its face, as stated above. Reasons 15.3 and 15.4 are also invalid because WC §13389 applies to permits issued pursuant to the Clean Water Act (CWA), including NPDES permits, and the CDO is not such a permit. If a CDO is required, then CEQA may apply, depending on State law, not the CWA. WC §13389 codifies in CA law a provision of the CWA.

Reason 15.2, that further study is required in the form of the Discharger choosing a treatment method, is an invalid reason for not preparing an environmental document. The determination of mitigation measures is the purpose of the environmental document. Tiering may be used to proceed with a project while details are determined that cannot be known at the outset.

Furthermore, Reason 15.2 appears to negate Reason 15.1. Reason 15.2 specifically mentions "potential adverse effects". Apparently this action does have the potential to adversely affect the environment and it meets the definition of a project under CEQA.

Finding 16 gives another reason for not complying with CEQA, namely that a Mitigated Negative Declaration (MND) has already been prepared by the City of Grass Valley. Reason 2 in Finding 15 prevents the R5WB from relying on the MND. Therefore it appears that the R5WB must prepare an environmental document.

However, Finding 16 identifies an environmental document already prepared pursuant to CEQA. The existence of a previously prepared environmental document ought to significantly reduce the amount of analysis required at this time.

Has the R5WB considered adopting a MND for this project that incorporates the previous MND and makes a finding that the determination of the source control measures mentioned may or may not require preparation of an EIR or MND at a later time?

Our concern is over projects for which no environmental analysis is performed. While this project appears to meet that criteria, there has been previous environmental analysis. Conformance with CEQA may be an issue with the form of the CDO rather than the substance of the project.

This comment is submitted pursuant to CEQA and is submitted on my behalf and behalf of the California Citizens for Environmental Justice. Violation of GC §65962.5 and 14 CCR §15300.2 are is long standing and widespread practice of the State Water Resources Control Boards (SWB) and the Regional Water Quality Control Boards (RWBs), of which R5WB is one.

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October 2, 2008

**Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114**

Re: City of Grass Valley Wastewater Treatment Facility

Please include me in the mailing list for notices concerning this facility pursuant to Public Resources Code (PRC) §21092.2.

You may call me at 209-223-1769 if you have any questions.

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October 2, 2008

**Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114**

**Re: Live Oak Wastewater Treatment Plant
Cease and Desist Order No R5-2008-XXXX**

The Central Valley Regional Water Quality Control Board (R5WB) proposes to approve a Cease and Desist Order (CDO) at its regular meeting to be held on October 23/24, 2008. Approval of the proposed CDO would establish a schedule for the City of Live Oak to develop and implement a plan to cease discharging certain pollutants to Reclamation District 777 Lateral Drain No 1..

The proposed action is unlawful because it violates the requirements of the California Environmental Quality Act (CEQA, Public Resources Code (PRC) §21000 and following). In particular, Finding No. 15 of the proposed CDO cites Title 14 of the California Code of Regulations (14 CCR) §15321(a)(2) as the authority for not preparing an environmental analysis. 14 CCR §15321 is a Categorical Exemption.

However, 14 CCR §15300.2(e) prohibits any categorical exemption from being utilized to avoid preparing an environmental analysis for any site on any list compiled pursuant to Government Code (GC) §65962.5. GC §65962.5(c)(3) requires the listing of any site for which a CDO is issued pursuant to Water Code (WC) §13301 or §13304 concerning the discharge of hazardous materials. "Hazardous materials" are defined in Health and Safety Code (HSC) §25501(o). That definition establishes a minimum definition for all CA State law, and it identifies hazardous material as any material for which there is a reasonable basis to conclude that because of its quantity, concentration, or physical or chemical characteristics, there is at least the potential for injury to human health and safety or the environment. It is not clear what lawful reason the R5WB could have for issuing a CDO or CAO that did not satisfy the definition of "hazardous material" in HSC §25501(o), and that is the controlling definition for GC §65962.5 in this case.

Finding No. 7 of the proposed CDO identifies the authority for taking the action as WC §13301.

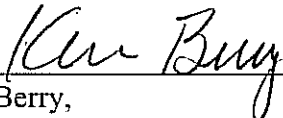
Finding No. 15 gives additional reasons for the project to be exempt from the environmental analysis required by CEQA. The CDO is not an NPDES permit, so WC §13389 does not apply. The CDO incorporates Order No. R5-2004-0096 and therefore is a new circumstance, at least, with respect to PRC §21166, and therefore it is not lawful to cite Order No. R5-2004-0096 as the decision that may have a significant adverse effect on the environment. If such an effect exists, it is relevant to the proposed Order.

Has any environmental analysis been prepared for the Live Oak WWTP? If there is such a document prepared by the City of Live Oak, it may be possible for the form of this CDO to be changed so that the decision conforms to CEQA.

This comment is submitted pursuant to CEQA and is submitted on my behalf and behalf of the California Citizens for Environmental Justice. Violation of GC §65962.5 and 14 CCR §15300.2 are is long standing and widespread practice of the State Water Resources Control Boards (SWB) and the Regional Water Quality Control Boards (RWBs), of which R5WB is one.

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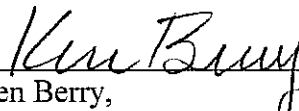
**Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114**

Re: Live Oak Wastewater Treatment Plant

Please include me in the mailing list for notices concerning this facility pursuant to Public Resources Code (PRC) §21092.2.

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October 2, 2008

**Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114**

**Re: Deuel Vocational Institution
Cease and Desist Order No R5-2008-XXXX**

The Central Valley Regional Water Quality Control Board (R5WB) proposes to approve a Cease and Desist Order (CDO) at its regular meeting to be held on October 23/24, 2008. Approval of the proposed CDO would establish a schedule for the Deuel Vocational Institute to develop and implement a plan to cease discharging certain pollutants to Deuel Drain.

The proposed action is unlawful because it violates the requirements of the California Environmental Quality Act (CEQA, Public Resources Code (PRC) §21000 and following). In particular, Finding No. 13 of the proposed CDO cites Title 14 of the California Code of Regulations (14 CCR) §15321(a)(2) as the authority for not preparing an environmental analysis. 14 CCR §15321 is a Categorical Exemption.

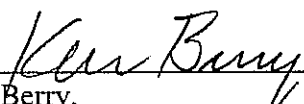
However, 14 CCR §15300.2(e) prohibits any categorical exemption from being utilized to avoid preparing an environmental analysis for any site on any list compiled pursuant to Government Code (GC) §65962.5. GC §65962.5(c)(3) requires the listing of any site for which a CDO is issued pursuant to Water Code (WC) §13301 or §13304 concerning the discharge of hazardous materials. "Hazardous materials" are defined in Health and Safety Code (HSC) §25501(o).

Finding No. 12 of the proposed CDO identifies the authority for taking the action as WC §13301.

This comment is submitted pursuant to CEQA and is submitted on my behalf and behalf of the California Citizens for Environmental Justice. Violation of GC §65962.5 and 14 CCR §15300.2 are is long standing and widespread practice of the State Water Resources Control Boards (SWB) and the Regional Water Quality Control Boards (RWBs), of which R5WB is one.

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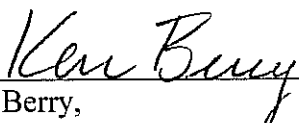
**Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114**

Re: Deuel Vocational Institution

Please include me in the mailing list for notices concerning this facility pursuant to Public Resources Code (PRC) §21092.2.

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October 2, 2008

**Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114**

**Re: Forward Landfill
Cleanup and Abatement Order No R5-2008-XXXX**

The Central Valley Regional Water Quality Control Board (R5WB) proposes to approve a Cleanup and Abatement Order (CAO) at its regular meeting to be held on October 23/24, 2008, or a future meeting. Approval of the proposed CAO would establish a schedule for the Forward Landfill to develop and implement a plan to characterize and remediate a plume of polluted groundwater.

The proposed action is unlawful because it violates the requirements of the California Environmental Quality Act (CEQA, Public Resources Code (PRC) §21000 and following). In particular, Finding No. 32 of the proposed CAO cites Title 14 of the California Code of Regulations (14 CCR) §15308, §15321(a)(2), and §15330 as the authority for not preparing an environmental analysis. 14 CCR §15308, §15321, and §15330 are Categorical Exemptions.


However, 14 CCR §15300.2(e) prohibits any categorical exemption from being utilized to avoid preparing an environmental analysis for any site on any list compiled pursuant to Government Code (GC) §65962.5. GC §65962.5(c)(3) requires the listing of any site for which a CAO is issued pursuant to Water Code (WC) §13301 or §13304 concerning the discharge of hazardous materials. "Hazardous materials" are defined in Health and Safety Code (HSC) §25501(o).

Finding No. 29 of the proposed CAO identifies the authority for taking the action as WC §13304.

This comment is submitted pursuant to CEQA and is submitted on my behalf and behalf of the California Citizens for Environmental Justice. Violation of GC §65962.5 and 14 CCR §15300.2 are is long standing and widespread practice of the State Water Resources Control Boards (SWB) and the Regional Water Quality Control Boards (RWBs), of which R5WB is one.

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October 2, 2008

**Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114**

Re: Forward Landfill

Please include me in the mailing list for notices concerning this facility pursuant to Public Resources Code (PRC) §21092.2.

You may call me at 209-223-1769 if you have any questions.

Sincerely,



Ken Berry,
California Citizens For Environmental Justice